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Supreme Court, U.S.
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No. 04-765

IN THE

Supreme Court of the United States

CORY R. MAPLES,

Petitioner,

v.

STATE OF ALABAMA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF ALABAMA

REPLY BRIEF

MARC DE LEEUW
125 Broad Street
32nd Floor
New York, NY 10004

GARY A. ALEXION
c/o THE LEGAL AID SOCIETY
Capital Division
199 Water Street
New York, NY 10038

JOHN G. BUTLER, JR.
223 East Side Square
Huntsville, AL 35801

JOSEPH J. FRANK
Counsel of Record
KATHY E. BREWER
RACHEL SULLIVAN
EVELYN BALTODANO-SHEEHAN
WHITE & CASE LLP
1155 Avenue of the Americas
New York, NY 10019
(212) 819-8222

FELICE M. DUFFY
ZELDES, NEEDLES & COOPER
1000 Lafayette Blvd.
Bridgeport, CT 06604

Counsel for Petitioner

192764

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

ARGUMENT

The State of Alabama offers four reasons why this Court should deny certiorari. First, that the question presented here would require this Court to revisit or overrule its prior holding in *Coleman v. Thompson*, 501 U.S. 722 (1991). (State's Opposition to Certiorari ("Opp.") at 7-10.) Second, that the decision below cannot be in conflict with the Florida Supreme Court's decision in *Williams v. State*, 777 So. 2d 947 (Fla. 2001), because the two courts considered requests for untimely appeal under two different procedural rules. (Opp. at 5-7.) Third, despite the fact that both parties below argued the application of federal due process, the Alabama Supreme Court's summary denial does not entitle Mr. Maples to the presumption established in *Michigan v. Long*, 463 U.S. 1032 (1983). (Opp. at 12 n.2.) Fourth, that the Alabama Supreme Court could have avoided constitutional issues entirely by denying the requested writ of mandamus as untimely. (Opp. at 10-13.)

This Court may dispose of each argument summarily. None is supported by the record below or by this Court's prior holdings, and at least one argument stretches the very limits of good faith.

I. Alabama Misses the Point Entirely – the Very Nature of the Conflict Between *Williams* and the Opinion Below Takes This Case Beyond *Coleman v. Thompson*.

Alabama's entire opposition to certiorari fails to address the one central fact that establishes both the conflict between state courts of last resort and the reason why the question presented here goes beyond this Court's prior holding in *Coleman v. Thompson*, 501 U.S. 722 (1991). Under the point heading "This Court Should Deny Certiorari Because Maples's Claim is Without Merit," Alabama quotes Mr. Maples's question presented. (Opp. at 7.) It does so, however, with a strategically-placed ellipse.

While simultaneously invoking *Coleman v. Thompson*, the Alabama Attorney General's Office offers the following quotation – omitting the most salient part:

> [W]hether the due process clauses of the 5th and 14th Amendments to the United States Constitution

> require the states to permit an untimely appeal from the denial of state post-conviction relief where that appeal is untimely solely through an error of counsel ***[and in disregard of specific instructions from a capital defendant.]***

(Opp. at 7) (emphasis supplied noting material omitted in original.) The omitted material in Mr. Maples's question presented is not only replaced by an ellipse, but is left completely unaddressed anywhere in the State's brief. Yet, the omitted material provides both the central basis for the conflict at issue and the reason that this case goes beyond the purview of *Coleman*.[1]

The Florida Supreme Court in *Williams* and the court below both addressed the limits of fundamental fairness. *Williams*, 777 So. 2d at 950; *see also* App. C. Neither case involved a mere error of counsel (as in *Coleman*), but instead decided whether to permit an untimely appeal where a capital defendant specifically directed his counsel to appeal and where that counsel specifically promised to do so. *Williams* considered this Court's prior decision in *Coleman* and, notwithstanding that decision, decided that where – as here – a capital defendant requests and receives specific assurances from counsel, federal due process requires the states to permit an untimely appeal. *Williams*, 777 So. 2d at 950.[2] The court below denied exactly the same relief on exactly the same facts. Alabama should not be permitted to obscure that fact by misquoting and then leaving unaddressed the central portion of the question presented.

II. Alabama Cannot Eliminate the Conflict with *Williams* Merely by Noting That the Two States Have Different Rules of Criminal Procedure.

Alabama seeks to distinguish *Williams* by noting that "the Alabama and Florida Courts were deciding procedural issues under separate state procedural rules regarding state law

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1. *Coleman* also is distinguishable as a federal habeas case solely addressing the right to counsel. 501 U.S. at 727, 752-57.

2. The State in *Williams* specifically relied on this Court's prior decision in *Coleman*. *See, e.g.*, State of Florida's Brief at 7, 8, 9.

remedies." (Opp. at 6.) Indeed, the State goes on to claim that "[t]he Florida Supreme Court – it goes without saying – was not applying Rule 21 of the Alabama Rules of Appellate Procedure and made no determination regarding the procedure that a petitioner must follow in order to obtain a writ of mandamus or a determination of the showing that a petitioner must establish under Rule 21 in order to obtain such writ." (Opp. at 6.)

In response to such arguments, Mr. Maples can only say "exactly right." Yet, what the State fails to understand is that Florida and Alabama both faced precisely the same question – *i.e.*, irrespective of whether Florida was interpreting Rule 3.850 and Alabama interpreting Rule 32, they both decided whether federal due process requires the states to permit an untimely appeal on identical facts. What Florida and Alabama Rules say is very much beside the point (*n.b.*, the rules apparently are identical in all material respects – and Alabama fails to claim otherwise), what matters is whether two state courts of last resort were faced with a federal constitutional requirement and how they decided. Here, Alabama decided that federal due process does not require the states to permit an untimely appeal in such circumstances, whereas Florida decided that it does. That basic conflict is what Mr. Maples would have this Court resolve.

III. Alabama Cannot Hide Behind the Silence of Its Supreme Court

Alabama repeatedly seeks to invoke its Supreme Court's summary denial of relief as a reason for this Court to deny certiorari. *See, e.g.*, Opp. at 5 ("The Supreme Court of Alabama, reviewing Maples's petition *de novo*, denied his petition without opinion in a one-sentence order. In the face of that void, Maples cannot show . . ."); Opp. at 7 ("It is impossible to determine how – or even whether – the Supreme Court of Alabama passed on any federal question when it denied Maples's petition."); Opp. at 10 ("Maples cannot definitively point to any federal question decided by the Supreme Court of Alabama when it summarily denied his petition for an Alabama writ of mandamus.") Yet, a state court may not effectively rule on a federal question explicitly raised by the

parties and then try to cloak its decision in silence so as to impede meaningful review. *See Michigan v. Long*, 463 U.S. 1032, 1040-41 (1983).

"Where a state court decision fairly appears to be interwoven with the federal law, and when the adequacy and independence of any possible state ground is not clear from the face of the opinion, [this Court] will accept as the most reasonable explanation that the state court decided the case the way it did because it believed that federal law required it to do so." *Id.* The proceedings below more than meet this standard.

As a preliminary matter, the mandamus proceeding below[3] was the second such proceeding for Mr. Maples. Both Mr. Maples and the Alabama Attorney General started out in the Alabama Court of Criminal Appeals. *See* App. B. In that mandamus proceeding, both Mr. Maples and the State argued the applicability of federal due process, and the opinion below specifically rejected Mr. Maples's federal due process claim. *Id.* at 12a ("Maples has failed to show that his right to procedural due process was violated."). Mr. Maples then followed the next step and sought the same mandamus relief from the next higher authority – the Alabama Supreme Court. *See* App. A. Again, both Mr. Maples and the Alabama Attorney General extensively briefed the requirements of federal due process. *See, e.g.*, Petition for Writ of Mandamus at 2, 7-10, 16-18, 20; State's Opposition to Mandamus, 6-13, 23, 24, 25 n.6, 26, 27.

To invoke this Court's jurisdiction requires nothing more. When a state court of last resort issues a summary opinion, the parties' briefing of the issues determines whether a federal question has been fairly presented and decided. *See Campbell v. Louisiana*, 523 U.S. 392, 403 (1998). Here, the *Long* and *Campbell* presumptions are met, and this Court should reject Alabama's attempt to rely on the silence of its own Supreme Court.

IV. Alabama Frivolously Suggests That The Relief Sought Below Was Untimely.

In an attempt to avoid this Court's jurisdiction, Alabama suggests that the Court below may have denied mandamus

3. The Alabama Supreme Court previously held that mandamus is the only method by which a Rule 32 petitioner like Mr. Maples may seek an untimely appeal. *See Marshall v. State*, 884 So. 2d 900, 905 (Ala. 2003).

because Mr. Maples's request was untimely. (Opp. at 10-13.) This argument does nothing more than serve as an exemplar of the State's repeated willingness to go to almost any length to deny Mr. Maples his day in court.

The State argues that: (1) the Alabama Supreme Court was silent on its reasons for denying Mr. Maples's mandamus petition; (2) Rule 21 of the Alabama Rules of Appellate Procedure requires that a petitioner seek mandamus within a reasonable time, presumptively forty-two days; (3) Mr. Maples sought mandamus from the Court of Criminal Appeals "fifty-five days after the reasonable time to file a petition for a writ of mandamus had lapsed;" and (4) therefore, the Alabama Supreme Court could have denied Mr. Maples's second mandamus petition as untimely (even though the Court of Criminal Appeals had not). (Opp. at 11.) What the State somewhat disturbingly fails to report, however, is that the Alabama Supreme Court only established mandamus as the remedy for an untimely appeal in its *Marshall* decision on Sept. 26, 2003 – and that Mr. Maples then followed those specific instructions by seeking mandamus on October 8, 2003, ***just 12 days later***. *See generally Marshall v. State*, 884 So. 2d 900 (Ala. Sept. 26, 2003).

Not only were Mr. Maples's mandamus petitions unquestionably timely, but the State has never argued to the contrary in any court below. Not once, not ever, not to anyone.

Alabama seeks to run away from its own repeated arguments about federal due process. It seeks to run away from Mr. Maples's repeated invocation of federal constitutional rights. It even seeks to run away from the Appellate Court's explicit rejection of due process as a basis for an untimely appeal. It is now time for the State to stop running and to address the Petitioner's arguments on the merits.

CONCLUSION

For the foregoing reasons, and for those reasons stated in his original petition, petitioner Cory R. Maples respectfully requests that this Court grant his Petition for a Writ of Certiorari to the Supreme Court of Alabama.

Respectfully submitted,

Joseph J. Frank
Counsel of Record
Kathy E. Brewer
Rachel Sullivan
Evelyn Baltodano-Sheehan
White & Case LLP
1155 Avenue of the Americas
New York, NY 10019
(212) 819-8222

Felice M. Duffy
Zeldes, Needles & Cooper
1000 Lafayette Blvd.
Bridgeport, CT 06604

Marc De Leeuw
125 Broad Street
32nd Floor
New York, NY 10004

Gary A. Alexion
c/o The Legal Aid Society
Capital Division
199 Water Street
New York, NY 10038

John G. Butler, Jr.
223 East Side Square
Huntsville, AL 35801

Counsel for Petitioner